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ABSTRACT

This study of racial discrimination toward blacks seeking rental units in seven Western Kentucky cities found that blacks were treated differently and negatively compared to whites at a rate of 9.8 percent in 1989, whereas the rate of discrimination in 1987 was 7.5 percent. Information was collected from tests by teams of black and white testers posing as apartment-seekers. The following discrimination criteria were applied: (1) availability; (2) courtesy; (3) location; (4) requirements; (5) neglect; (6) quality; (7) racial remarks; and (8) price. Among results reported are the following: (1) overall, instances of discriminatory treatment of blacks increased between 1987 and 1989; (2) rental agents in Paducah, Bowling Green, Owensboro, Henderson, Hopkinsville, Murray, and Fulton were most likely to discriminate by misrepresenting apartment availability; (3) blacks were treated less courteously than whites more frequently in 1989 than in 1987; (4) Henderson had more discrimination in its apartment complexes than any other city; (5) Owensboro was the second worst city for discrimination; and (6) the frequency of discrimination in Bowling Green and Paducah decreased between 1987 and 1989. Statistical data are presented in five tables and three graphs. An 11-item bibliography, notes on the study methodology, and the housing provisions of the Kentucky Civil Rights Act are appended. (FMW)

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Discrimination Against Black Apartment-Seekers Increases Slightly in Western Kentucky 1989

Henderson Has Worst, Paducah Lowest Discrimination Rates

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HIGHLIGHTS

1. Blacks seeking apartment rental units in seven Western Kentucky cities were treated differently and negatively compared to whites 2.3 percent more often in 1989 than in 1987 as measured by teams of black and white testers who posed as apartment-seekers. Instances of discriminatory treatment occurred at a rate of 9.8 percent in 1989 compared to 7.5 percent in 1987.

2. Blacks seeking apartments in Paducah, Bowling Green, Owensboro, Henderson, Hopkinsville, Murray, and Fulton were most likely to encounter discrimination in the category of apartment availability during 1989. Rental agents misrepresented apartment availability in 16.6 percent of all measured instances, down slightly from 15.1 percent in 1987.

3. Blacks were treated less courteously than whites 13.6 percent of the time in 1989, the second-most frequent category in which blacks suffered different and negative treatment. The total 1989 discourtesy rate against blacks was 5.5 percent worse than the 1987 rate of 8.1 percent. Overall treatment was the specific measure of the broader category in which blacks were most likely to receive different and negative treatment.

4. Henderson had more discrimination at its apartment complexes than any other Western Kentucky city in 1989. Its discrimination rate of 11.2 percent was an increase of 5.1 percent compared to 1987, when blacks were discriminated against in 6.1 percent of all measureable instances. Misrepresentation of apartment availability, which occurred 30.8 percent of the time, was by far the category in which Henderson blacks suffed the most discrimination.

5. Owensboro rental agents discriminated against blacks 9.1 percent of the time in 1989, the second worst discrimination rate and up from 6.0 percent in 1987. Owensboro blacks were treated less courteously compared to whites 20.7 percent of the time, the most frequent form of different and negative treatment in that city during 1989.

6. In Bowling Green, discrimination against blacks occurred at an 8.4 percentage rate in 1989, down from 9.5 percent in 1987. The most discrimination occurred in the availability category. "Availability" was also the most prevalent form of discrimination in Bowling Green during 1987.

7. Racial discrimination in Paducah occurred at only a 3.9 percent rate in 1989, less than half the 1987 rate of 8.6 percent. Apartment availability and discourteous treatment were the categories in which Paducah blacks most often received different and negative treatment in 1989.

8. The report concludes that frequent occurences of discrimination against blacks based on lack of courtesy, misrepresentation of apartment availability, and on efforts to discourage black renters by not showing them apartments are behaviors which most dissuade blacks from wanting to rent an apartment. While discrimination levels in apartment rentals in the seven communities were well below those attained during testing in Louisville and Lexington during 1987, housing discrimination against blacks based on race remains illegal, and must be stopped.

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PREFACE

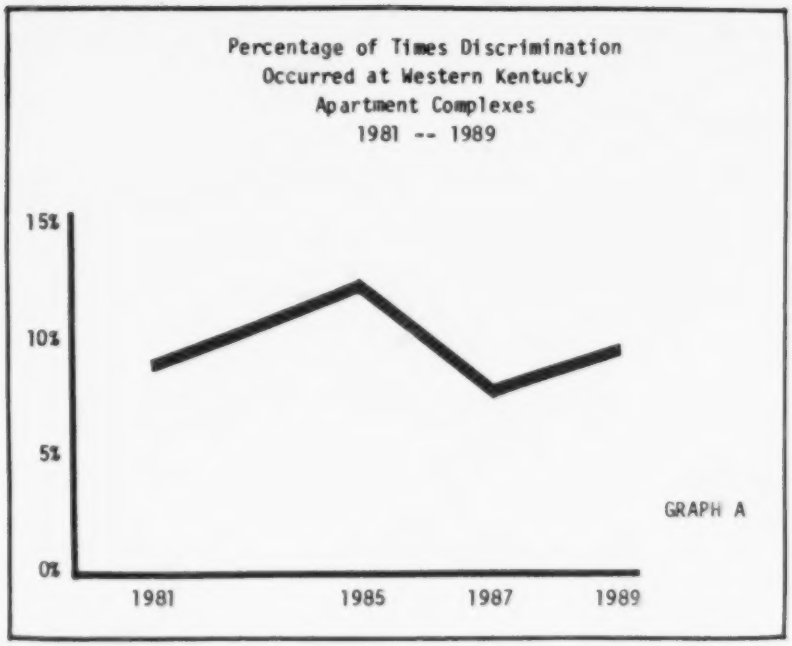
The data presented in this report were collected from tests conducted during 1987 and 1989. The data are measured under eight discrimination categories: availability, courtesy, location, requirements, neglect, quality, racial remarks, and price. "Discrimination" and "different and negative treatment" are used synonymously in the report. The former is not meant to indicate discrimination in the legal sense. For a more detailed description of methodology used in the tests and in this report, see Appendix A.

Western Kentucky Blacks Face More Discriminatory Treatment in 1989

Blacks seeking apartment rental units in seven Western Kentucky cities were treated differently and negatively compared to whites 2.3 percent more often in 1989 than in 1987 as measured by teams of black and white testers who posed as apartment seekers. Instances of discriminatory treatment occurred at a rate of 9.8 percent in 1989 compared to 7.5 percent in 1987.

The 1989 discrimination rate was also worse than in 1981, when discrimination occurred 9.3 percent of the time, but better than the 1985 rate of 12.1 percent. Fifty apartment tests were conducted in Western Kentucky in 1989; 48 were conducted in 1987.

Blacks seeking apartments in Paducah, Bowling Green, Owensboro, Henderson, Hopkinsville, Murray, and Fulton during 1989 were most likely to encounter discrimination based on apartment availability, one of the eight categories used to measure discrimination. Rental agents misrepresented apartment availability in 16.6 percent of all measured instances, up from 15.1 percent in 1987.



Among the specific discrimination measures included under the availability category, blacks were most likely to be discriminated against in the rental agent's initial response to their request about apartment availability. Agents initially misrepresented apartment availibility to blacks in more than one out of four--28.0 percent--of the 50 tests. This was down slightly from 1987, when blacks were initially deceived about apartment availibility in 29.2 percent of 48 tests.

Blacks were treated less courteously than whites 13.6 percent of the time in 1989, the second-most frequent category in which blacks suffered different and negative treatment. The total 1989 discourtesy rate against blacks was 5.5 percent worse than the 1987 rate of 8.1 percent. Overall treatment was the specific measure of the broader courtesy category in which blacks were most likely to receive different and negative treatment. Discrimination here occurred in 24.0 percent of all tests, up sharply from 12.5 percent

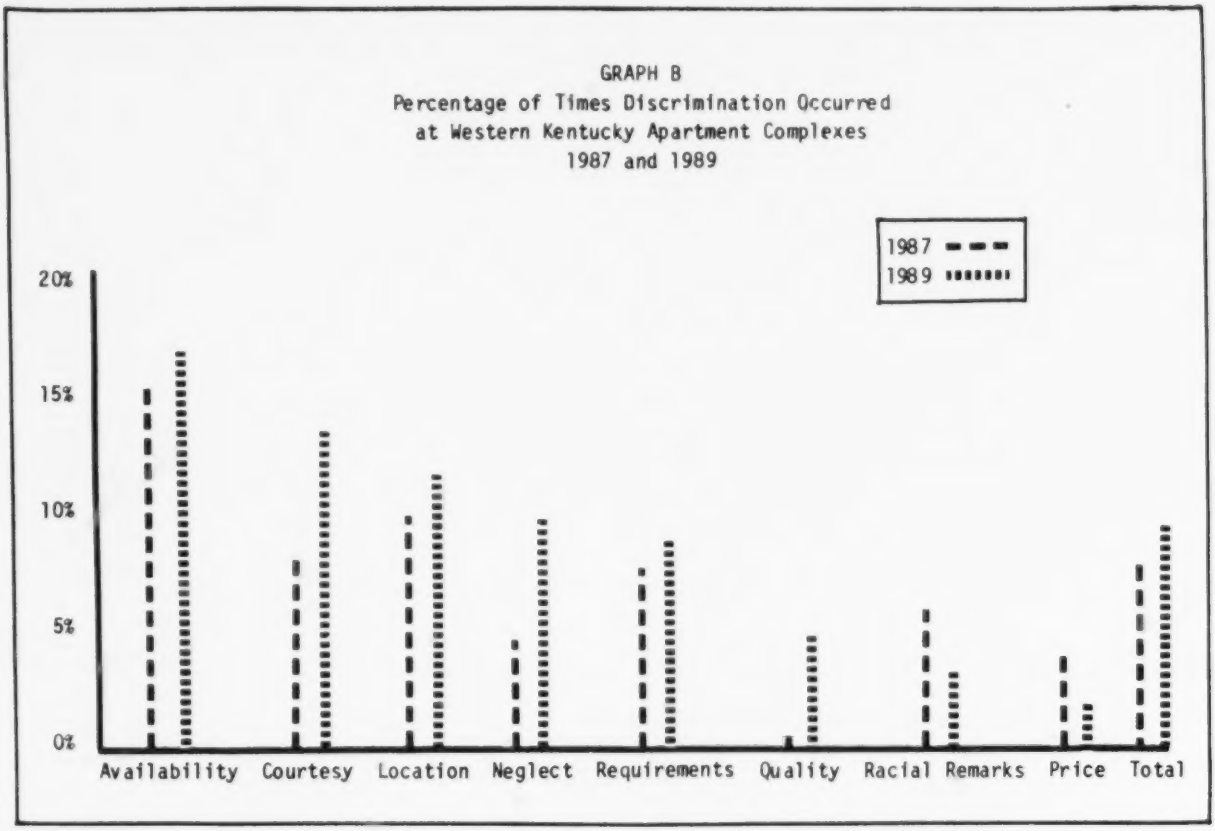
of all 1987 tests. However, had overall courtesy been graded to include small subjective differences in treatment, blacks would have been treated less courteously than whites in approximately 80 percent of the 1989 tests.

Discrimination as measured by location occurred 11.6 percent of the time in 1989, up from 9.9 percent in 1987. Rental agents failed to show apartments to blacks after showing them to whites in 12.9 percent of all tests. This type of location discrimination was up slightly from 12.5 percent of all tests in 1987. In addition, rental agents steered blacks to other apartment complexes or failed to tell them about other property after suggesting the property to whites in 10.0 percent of all tests. This was worse than the discrimination

TABLE A

Percentages of Discriminatory Treatment Against Blacks Seeking Housing in Western Kentucky 1987 and 1989

Treatment Category	Percentage of Discrimination 1987	1989	Percentage Changes
Availability	15.1	16.6	+ 1.5%
Courtesy	8.1	13.6	+ 5.5%
Location	9.9	11.6	+ 1.7%
Neglect	4.6	9.5	+ 4.9%
Requirements	7.1	8.4	+ 1.3%
Quality	0.0	4.8	+ 4.8%
Racial Remarks	5.2	3.0	- 2.2%
Price	4.3	2.2	- 2.1%
Average Rate of Discrimination Per Test	7.5	9.8	+ 2.3%

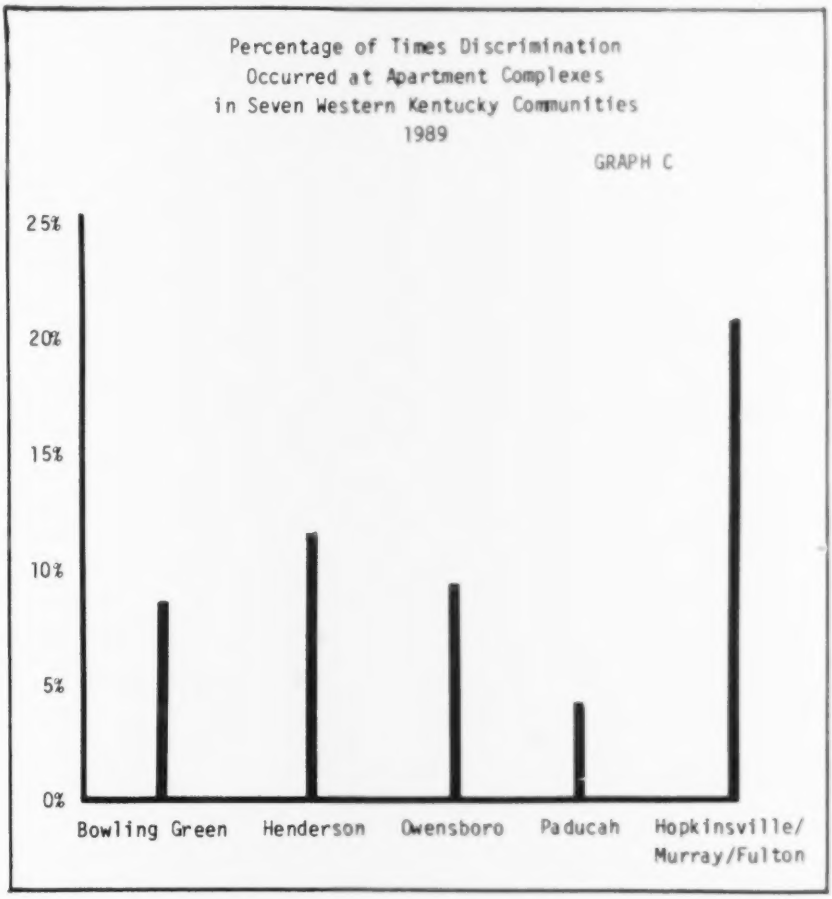


rate of 4.2 percent in 1987.

In the requirements category, blacks were held to different or higher standards than whites in 8.4 percent of all measured instances in 1989. More "requirements" discrimination occurred in 1989 than in 1987, when blacks were held to different requirements than whites at a rate of 7.1 percent of all instances. Agents asked blacks--but not whites--about the number of persons in their household in 26.0 percent of all tests, about their marital status in 25.8 percent of all measureable instances, and about "other" requirement needs--including how soon they would need an apartment--in 26.7 percent of all measureable instances. (The latter question was used by some rental agents to mislead the black tester

about when an apartment would be ready for occupancy.) Rental agents also held blacks to higher standards than whites in what was needed to hold an apartment in 26.7 percent of all instances.

Rental agents gave more attention to whites than blacks 9.5 percent of the time in 1989, an increase from the 4.6 percent "neglect" rate in 1987. "Neglect" occurred most frequently when rental agents failed to volunteer information about leases, credit checks, and security deposits to blacks after having given that information to whites. In addition, agents failed to offer blacks application forms in 11.1 percent of the 1989 tests. No instance occurred in 1987 when blacks were not offered application forms



after they had been offered to whites.

As in 1987, little discrimination occurred in the three remaining discrimination categories in 1989. Different and negative treatment toward blacks involving racial remarks, price, and apartment quality occurred in fewer than 5.1 percent of the measureable instances in the Western Kentucky cities.

Henderson Has Most Race Discrimination, Paducah Least

Henderson had more discrimination at its apartment complexes than any other Western Kentucky city in 1989 with a discrimination rate of 11.2 percent. That was an increase of 5.1 percent compared to 1987, when blacks were discriminated against in 6.1 percent of all measureable instances. Misrepresentation of apartment availability, which occurred 30.8 percent of the time in the eight Henderson tests was by far the category with the most discrimination against blacks in 1989.

Owensboro rental agents discriminated against blacks 9.1 percent of the time in 16 tests during 1989, the second worst discrimination rate among Western Kentucky cities. This was up from 6.0 percent in 1987. Owensboro blacks were treated less courteously compared to whites 20.7 percent of the time, the most frequent form of different and negative treatment in that city during 1989.

In Bowling Green, discrimination against blacks occurred at an 8.4 percentage rate in 1989, down from 9.5 percent in 1987. The most discrimination--six times or 16.2 percent of all measurable instances--occurred in the availability category. "Availability" was also the most prevalent form of discrimination in Bowling Green

during 1987. Eight tests were conducted in 1989.

Racial discrimination in Paducah occurred at only a 3.9 percent rate in 1989, less than half the 1987 rate of 8.6 percent. Apartment availability and discourteous treatment were the categories in which blacks most often received different and negative treatment in the 11 Paducah tests.

Tests conducted in Hopkinsville, Murray, and Fulton resulted in discrimination occurring in 20.6 percent of all measureable instances. As in the rest of Western Kentucky, blacks in these communities encountered the most discrimination in the category of apartment availability, in which blacks suffered some type of different treatment 34.8 percent of the time. Of the specific measures within the availability category, rental agents mislead blacks in four of seven tests--57.1 percent--about when an apartment would be available. In addition, rental agents in Hopkinsville, Murray, and Fulton neglected blacks at a rate of 30.8 percent, and discriminaed against blacks based on apartment location at a 30.0 percent rate.*

What follows are individual analyses of discrimination in apartment rental testing in four communities of Western Kentucky in 1989.

* A total of seven tests were conducted in the three cities: three in Hopkinsville, and two each in Murray and Fulton. The tests were counted together and not analyzed by individual community because of their small number.

HENDERSON: Percentage of Discriminatory Acts Almost Doubles

Black testers in Henderson suffered discrimination 11.2 percent of the time in 1989, a large increase from the 6.1 percent discrimination rate of 1987. Eight tests were conducted in 1989; 10 tests were conducted in 1987.

Among the eight categories under which specific measures of discrimination were grouped, blacks most frequently were discriminated against in the "availability" category--30.8 percent of the time. This was a large increase from 1987, when agents misrepresented apartment availability at a rate of 7.5 percent. Blacks were treated differently and negatively compared to whites at rates of 25.0 percent or more based on the following "availability" measures: initial response to apartment availability query (37.5

TABLE B

Percentages of Discriminatory Treatment Against Blacks Seeking Housing in Henderson 1987 and 1989

Treatment Category	Percentage of Discrimination 1987	1989	Percentage Changes
Availability	7.5	30.8	+23.3%
Courtesy	0.0	7.1	+ 7.1%
Location	8.0	11.8	+ 3.8%
Requirements	9.3	11.6	+ 2.3%
Neglect	0.0	4.3	+ 4.3%
Quality	0.0	0.0	0.0%
Racial Remarks	0.0	12.5	+12.5%
Price	10.0	0.0	-10.0%
Average Rate of Discrimination Per Test	6.1	11.2	+ 5.1%

percent), whether the complex used a waiting list (33.3 percent), if the apartment was being held (28.4 percent), and the date when the apartment would be available (25.0 percent).

Discrimination in three categories--requirements, location, and racial remarks--occurred at about the same frequency in Henderson during 1989. Blacks were held to more demanding "requirements" than whites in 11.6 percent of all measureable instances, slightly higher than the 9.3 percent rate in 1987. Specific measures grouped under "requirements" in which blacks were treated differently and negatively compared to whites included rental agents' misinforming blacks about what was required to hold an apartment (66.7 percent); informing blacks about the need for a credit check in a way that would discourage their applying for a unit (50.0 percent); questioning blacks about their marital status (33.3 percent); questioning blacks about the number of persons in their household (25.0 percent); and questioning about where blacks were employed (25.0 percent of all tests).

In the "location" category, Henderson blacks suffered discrimination 11.8 percent of the time. All of the disparate and negative treatment in this category occured in failing to show apartments to blacks that had been shown to whites--25.0 percent of all tests. This was also more than in 1987, when discrimination occurred in 8.0 percent of all measured instances.

Rental agents were noticeably less courteous to blacks than whites at a rate of 7.1 percent in 1989, and blacks were neglected compared to whites in 4.3 percent of all instances in 1989. No instances of discrimination occurred in either category during 1987.

Two instances of racial remarks occurred in Henderson during

EXAMPLE: Black Testers Denied Opportunity to Rent Apartment "Being Held;" White Testers Given Chance to Inspect and Rent Unit At Henderson Complex

A Henderson apartment complex was inspected by a pair of male testers. The white visited the complex first. He stopped a woman who was cutting the grass and asked her about a two bedroom apartment. The woman--who was the manager--pointed to a unit and said "that's the only one I have." She showed the tester apartment "XXX". She did not say anything about the unit being held for another person; he did not say anything about holding it.

Fifteen minutes later the black tester visited the complex. He asked for a two bedroom apartment. The manager said one unit was available, but it was being held "for a young lady." Two apartments would be available in several weeks.

Later in the day, the white tester called back. He asked if his wife could look at the apartment he had seen. The manager said that would be fine, and added that although a young woman had filled out an application for the unit and was supposed to have come in that afternoon, she had not shown up. The manager did not say she was holding the unit for the woman.

Black and white female testers visited the complex on the following day. The black tester rang the bell at the manager's apartment. She asked if a two bedroom unit was available. The manager said she had nothing vacant. The tester asked when an apartment would be available. The manager said a vacancy might open in the middle of July. The tester asked if she could see an apartment. The manager said she was welcome to look at her apartment, but her husband was asleep and he did not want to be disturbed. She then changed her mind, and invited the tester to come in and "look around." When the tester finished, she asked about rent and utilities. The manager answered, then said a unit might come open by July 8th or 9th. The tester asked when she could see that unit. The manager, "made a vague comment about not caring for the carpet," then said she could show her an apartment that had already been rented. She took the tester to apartment "XXX". It was the same unit she had shown the white male tester on the previous day, and the same unit that she had told the black male tester was being held. The tester looked at the apartment and left.

The white female tester, posing as the wife of the white male tester from the day before, called on the apartment manager about two hours after the black tester had left. She asked to see the apartment her husband had seen. The manager showed her unit "XXX". Toward the end of the inspection, the manager said the apartment was "possibly rented to a nurse," but gave no indication that the apartment could not be rented if the tester made an offer. For the second time in two days, the manager told a black that "XXX" was being held and was unavailable to rent while allowing whites to view the apartment and holding out the prospect that they could rent it.

1989. No racial remarks were made by Henderson rental agents in 1987.*

Rental agents did not misrepresent apartment price to blacks nor

* Racial remarks are defined as derogatory statements made by rental agents about blacks to either black or white testers. These include references to racial stereotypes and negative opinions about blacks.

show apartments of lower quality to blacks in 1989. Two years before, there were no discriminatory incidents based on apartment quality; there was one incident of a rental agent giving different information about price--10.0 percent of the time.

OWENSBORO: Percentage of Discrimination Worsens by 50 Percent; Blacks Receive Discourteous Treatment at 20 Percent Rate

Black testers in Owensboro were discriminated against at a rate of 9.1 percent in 1989 compared to 6.0 percent in 1987. Sixteen tests were conducted in the community during 1989; 13 were conducted in 1987.

"Courtesy" was the category in which blacks suffered the most

TABLE C

Percentages of Discriminatory Treatment Against Blacks Seeking Housing in Owensboro 1987 and 1989

Treatment Category	Percentage of Discrimination 1987	1989	Percentage Changes
Availability	6.8	3.8	+ 3.0%
Courtesy	2.6	20.7	+18.1%
Location	6.9	5.7	- 1.2%
Requirements	5.8	9.7	+ 3.9%
Neglect	3.8	10.0	+ 6.2%
Quality	0.0	0.0	0.0%
Racial Remarks	0.0	0.0	0.0%
Price	0.0	6.2	+ 6.2%
Average Rate of Discrimination Per Test	6.0	9.1	+ 3.1%

different and negative treatment compared to whites during 1989. They were treated discourteously compared to whites 20.7 percent of the time, a sharp increase from 1987, when "courtesy" discrimination occurred at a rate of 2.6 percent.

Blacks were treated differently and negatively compared to whites in each measure of the "courtesy" category: at a rate of 31.2 percent in the initial contact, 25.0 percent in overall treatment, 18.2 percent when rental agents did not encourage blacks to call back, and at a 6.7 percent rate when rental agents did not offer blacks a business card.

Blacks were neglected by rental agents compared to attention afforded whites 10.0 percent of the time. This was far worse than in 1987, when blacks suffered a 3.8 percent discrimination rate.

EXAMPLE: Owensboro Rental Agent Misrepresents Apartment Availability to Black Tester

A white tester at an Owensboro complex told the rental agent he was looking for an apartment. The agent asked if he was looking for a one or two bedroom unit. He said a two bedroom. The agent said she had one she could show, and took the tester to look at the apartment. She said it rented for $285 per month and she gave the tester an application to fill out. Overall, the tester said that her manner was somewhat friendly and courteous.

The black tester arrived at the complex an hour later. He asked the rental agent if she had any two bedroom apartments. She said no. The tester asked when a two bedroom might be available. She said that she would have two units available within four days. The tester asked about the rent; the agent said $295--$10 more than the rent she had quoted to the white. The agent then got out a floor plan, explained the layout of the two bedroom apartments. She did not, however, show the black tester an apartment and did not offer him an application form as she had with the white. The black said that overall, her manner with him was "polite, but not friendly."

Failure to voluntarily give blacks information about security deposit requirements or the use of security deposit requirements to discourage blacks from applying for an apartment occurred 30.0 percent of the time, the most frequent type of neglect. Failure to volunteer lease information occurred 25.0 percent of the time. Agents also failed to voluntarily offer blacks application forms after volunteering them to whites in 14.3 percent of the measured instances.

Blacks were held to different or higher requirements than whites at a rate of 9.7 percent during 1989, Owensboro's third worst discrimination category and worse than in 1987, when the discrimination rate was 5.8 percent. Rental agents asked blacks but not whites their marital status (30.8 percent of the time), required blacks to hold longer leases than whites (28.4 percent of the time), and asked blacks but not whites the number of persons in the household (25.0 percent of all tests).

Low rates of discrimination against black testers in Owensboro occurred in the remaining discrimination categories in 1989, all of which had less discrimination than two years prior. "Location" discrimination occurred at a 5.7 percent rate in 1989. This was down slightly from a 6.9 percent rate 1987. All instances of "location" discrimination against blacks occurred when rental agents tried to steer black or white testers away from the apartment complex they were testing.

Owensboro rental agents misrepresented apartment availability at a rate of 3.8 percent during 1989. The initial response of rental agents to blacks' inquiry about apartment availability accounted for

all the discriminatory instances in the "availability" category Blacks were quoted higher rents than whites in one test in 1989--6.2 percent of all tests. Blacks suffered no discrimination in the categories of "racial remarks" or "apartment quality." There was one incident of racial remarks in the 1987 tests--3.8 percent of all tests--and no "quality" discrimination in 1987.

BOWLING GREEN: Discrimination Against Black Apartment Seekers Declines Slightly Between 1987 and 1989

Discrimination against blacks seeking apartments in Bowling Green declined to a rate of 8.4 percent of all measured instances in 1989 from 9.5 percent in 1987. Eight tests were conducted in 1989,

TABLE D

Percentages of Discriminatory Treatment Against Blacks Seeking Housing in Bowling Green 1987 and 1989

Treatment Category	Percentage of Discrimination 1987	1989	Percentage Changes
Availability	18.2	16.2	- 2.0%
Courtesy	14.3	10.3	- 4.0%
Location	9.7	18.7	+ 9.0%
Requirements	9.1	5.7	- 3.4%
Neglect	6.2	6.8	+ 0.6%
Quality	0.0	0.0	0.0%
Racial Remarks	4.5	0.0	- 4.5%
Price	0.0	0.0	0.0%
Average Rate of Discrimination Per Test	9.5	8.4	- 1.1%

EXAMPLE: Rental Agent Steers Black to Other Complex After Showing Unit to White at Apartment in Bowling Green

The rental agent at an apartment complex in Bowling Green steered a black tester away from the complex she was inspecting to another complex in the area. Minutes before, a white tester had been shown a one bedroom unit ready to be rented at the same complex. The black was told that no vacancies were available at the first site. The rental agent gave the tester directions to drive to the second apartment complex.

11 in 1987.

Of the eight broad categories under which specific discriminatory measures are grouped, discrimination most often occurred in the "location" category. Blacks were treated differently and negatively compared to whites based on "location" discrimination in 18.7 percent of all measured instances. Discrimination occurred most often in this category--in 25.0 percent of all tests--when rental agents did not show apartments to blacks after showing them to whites. In addition, blacks were discriminated against in location by being steered to another apartment complex in 12.5 percent of all tests. Rental agents' use of location to discriminate in 1989 almost doubled from the 1987 rate of 9.7 percent.

The second-most frequent type of discrimination suffered by Bowling Green blacks was in receiving false information about apartment availibility. This type of discrimination occurred 16.2 percent of the time during 1989, down from 18.2 percent in 1987. Specific measures of different and negative treatment against blacks based on availability included receiving misinformation from the agents' initital response about apartment availability (50.0 percent of all tests), being misinformed about the date when an apartment would be available (12.5 percent of all tests), and being mislead about if an apartment was being held (12.5 percent of all tests).

Blacks in Bowling Green received less courteous treatment than whites 10.3 percent of the time in 1989. This was an improvement from 1987, when blacks were treated discourteously compared to whites 14.3 percent of the time. They received different and negative treatment compared to whites in not being offered a business card by the rental agent (16.7 percent of all measured instances), in their initial contact with rental agents (12.5 percent of all tests), and in the overall courtesy they received (12.5 percent of all tests).

Blacks were "neglected" compared to whites at a rate of 6.8 percent and they were held to higher "requirements" than whites in 5.7 percent of all 1989 Bowling Green tests. These rates compare with a 6.2 percent rate of neglect and a 9.1 percent rate involving different requirements in 1987.

Frequent instances of neglect suffered by blacks included not receiving security deposit information (25.0 percent of all measureable instances), and not receiving lease information (20.0 percent of all tests). Different and negative treatment based on "requirements" occurred when blacks were given misleading information about what was required to hold an apartment (50.0 percent of all tests), in being asked how many persons were in their household (25.0 percent of all tests), and in being asked about their marital status (25.0 percent of all tests).

No Bowling Green rental agents made derogatory racial remarks, priced apartments higher for blacks than whites, or showed blacks apartments in bad condition compared to those shown whites during 1989. Racial remarks occurred in 4.5 percent of all measured instances in 1987. No instances of "price" or "quality"

discrimination occurred during that year

PADUCAH: Discrimination Rate Halved

Discrimination rates against blacks seeking to rent apartments in Paducah fell to 3.9 percent in 1989 from 8.6 percent in 1987. Eleven tests were conducted in 1989; 13 tests were conducted two years before.

Black testers in Paducah suffered the most discrimination in rental agents'misrepresentation of apartment availability. Discrimination in this category occurred 10.5 percent of the time. This was substantially lower than two years before, when blacks suffered a discrimination rate of 22.0 percent. The response of rental agents to blacks' initial request for an apartment and misrepresentation about when apartments would be available accounted for all four incidents of discrimination in the "availability" category. Rental agents extended less courtesy to blacks than to whites 9.5 percent of the time in 1989, a slight improvement over 1987, when discrimination occurred at a 10.6 percent rate. "Courtesy" discrimination against blacks occurred in overall discourteous

EXAMPLE: Black Tester Lied To About Apartment Availability At Paducah Complex

Black and white testers were given different information about the availability of two bedroom apartments at a complex in Paducah. The rental agent told the white tester that, although she had no two bedroom apartments available, she would have four vacancies after the first of the month. When the black tester asked about a two bedroom unit, the agent said she "might" have some available shortly after the fifth of the next month.

treatment (18.2 percent of all tests); in the initial contact with rental agents (9.1 percent of all tests); and in the failure of rental agents to encourage the black tester to call back (11.1 percent of the time). Six other categories had negligible discrimination in Paducah during 1989. Blacks were held to higher requirements than whites 3.3 percent of the time and just one incident of neglect occurred. No discrimination occurred in the categories of racial remarks, location, rental price, and apartment quality. All were better than or equal to the discrimination rates in Paducah during 1987, when racial remarks occurred in 7.2 percent of all measured instances, and location discrimination occurred in 9.5 percent of all instances. No instances of different and negative treatment against blacks based on price or quality occurred in 1987.

TABLE E

Percentages of Discriminatory Treatment Against Blacks Seeking Housing in Paducah 1987 and 1989

Treatment Category	Percentage of Discrimination 1987	1989	Percentage Changes
Availability	22.0	10.5	-11.5%
Courtesy	10.6	9.5	- 1.1%
Location	9.5	0.0	- 9.5%
Requirements	5.2	3.3	- 1.9%
Neglect	9.0	1.5	- 7.5%
Quality	0.0	0.0	0.0%
Racial Remarks	7.1	0.0	- 7.1%
Price	0.0	0.0	0.0%
Average Rate of Discrimination Per Test	8.6	3.9	- 4.7%

CONCLUSIONS

Although only a small worsening of discrimination against blacks seeking apartments in Western Kentucky occurred between 1987 and 1989, the high level of discrimination in some categories is cause both for concern and continued efforts toward improvement. The far too frequent occurences of discrimination based on lack of courtesy to blacks, misrepresentation of apartment availability to blacks, and efforts to discourage black renters by not showing them apartments shown to whites are precisely the behaviors which most dissuade blacks from attempting--or wanting--to rent an apartment.

That they remain a problem despite efforts to eradicate discrminatory behavior of apartment complex management is discouraging but not beyond solution. Prior efforts have reduced overall apartment discrimination against blacks in Western Kentucky to low levels; continued efforts are needed to overcome the more ingrained practices of discrimination. These efforts include:

1. Testing

Systematic housing tests, such as the ones conducted in this study, are a vital tool to uncover discriminatory practices that have become less noticeable but more deceptive.

Testing was developed and initiated by Dr. George Schermer and the National Committee Against Discrimination in 1977 under the HUD-financed Housing Market Practices Survey. Since then, fair housing groups accross the nation have fine-tuned and strengthened testing techniques; the 1989 tests reflect those improvements.

Testing has been advocated by the U.S. Department of Housing and Urban Development as an "enhanced enforcement mechanism" necessary to uncover discrminatory practices in the marketplace today.

The courts have also endorsed testing. In a 1983 case, the Seventh U.S. Circuit Court of Appeals wrote:

> The evidence provided by testers is frequently valuable, if not indispensable . . . We have long recognized that this requirement of deception was a relatively small price to pay to defeat racial discrimination. . . . We have discovered no case in which the credibility of testimony provided by a tester has been questioned simply because of the tester's "professional" status. Indeed, tester evidence may well receive more weight because of its source. Testers seem more likely to be careful and dispassionate observers of the events which lead to a discrimination suit than individuals who are allegedly being discriminated against. (Richardson v. Howard, 712 F.2d 319, 321-322, 7th Cir. 1983).

Without the tool of testing and its continued threat, discrimination in housing would undoubtably be more pervasive.

2. Improved Real Estate Practices

The real estate and rental industries in Western Kentucky's larger communities have, in general, taken seriously their legal obligation to ensure equal housing opportunity. However, workshops which dealt with the 1989 Fair Housing Act held in Owensboro, Bowling Green, and Paducah in April, 1989, which were conducted by staff of the Kentucky Commission on Human Rights were poorly attended, especially by those communities' property managers and owners.

Continuing pockets of high discrimination indicate that this

type of training needs to continue if housing discrimination based on race is ever to become a piece of history. Commission staff will meet this need in 1990 with at least four fair-housing seminars planned for property managers and owners in Kentucky communities with the highest levels of race discrimination against black apartment-seekers. At the request of property management associations, staff continues to make fair-housing presentations, which have proven to be a valuable tool for helping them learn how to meet the fair-housing laws and avoid discrimination suits. Results of apartment testing, such as those contained in this report, can also provide property owners and managers with the evidence needed to better train their agents in the proper, non-discriminatory techniques that promote fair housing.

In addition, conciliation agreements reached with property owners accused of race discrimination now include the requirement that they attend fair-housing seminars.

3. Improved Enforcement

The Kentucky Fair Housing Act is a model law that has been made stronger in recent years by legislative action and court decisions. State law clearly forbids the type of deception still occuring in the housing market. KRS 344.360 (5) states it is illegal to:

> represent to an individual that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to permit an individual to inspect real property because of his race, color, religion, or national origin [and sex*].

*Sex was added to the protected coverages in Kentucky's Fair Housing Law in 1980 as KRS 334.362.

In 1981, the Kentucky Supreme Court upheld the award of damages for embarrassment and humiliation to discrimination victims, a provision that had been added to the law in 1978.

Since that decision, Kentucky courts have upheld increasingly higher damage awards to housing discrimination victims. In May 1986, the Kentucky Court of Appeals upheld a Commission order that required a Maysville landlord to pay a black woman almost $7,000 in embarrassment and humiliation damages because he had refused to rent her an apartment because of her race. In addition, the court of appeals ordered the landlord to pay the black woman $2,307.28 more in interest that had accrued while he appealed the commission ruling.

In September, 1989, the Appeals Court upheld another Commission order involving embarrassment and humiliation damages. In September 1986, the Commission had ordered a Hopkinsville real estate company to pay a black couple, Tammy and Earl Young, $4,000 in embarrassment and humiliation damages because it had misrepresented the availability of a house for rent with an option to buy. The company appealed the decision to the Christian Circuit Court, which upheld the Commission's finding of discrimination against the Young's but found that the award for embarrassment and humiliation damages was "arbitrarily high." It reduced damages to Tammy Young to $1,000; Earl Young's damages fell to $500.

In overturning the circuit court decision, the Court of Appeals said that "the circuit court failed to articulate even one factor suggesting that the [Commission's] award is susceptible to a claim of unreasonableness, and as there is sufficient evidence in the record to support the award, it is our conclusion that the circuit court erred in its determination that the damages are excessive."

These and other examples are warnings that apartment and real estate agents need to remember: if they decide to discriminate, it could be costly.

Another deterrent in Kentucky law is the apartment occupancy reporting regulation (104 KAR 1:060), which was added in 1975, that requires:

> the owner of apartment buildings with twenty-five (25) or more units to keep records and to file annual reports with the Commission indicating their racial occupancy and application experience. The information obtained is used by the Commission in accordance with KRS 344.190 (10) and (11) to provide technical assistance to the real estate industry to facilitate compliance with the fair housing provisions.

The requirement that apartment owners report the number of black residents they have each year is a regular reminder that they may not discriminate. New Jersey is the only other state to have such a regulation.

Increased Discrimination Must Be Reduced

Blacks and other minorities have the freedom to select housing anywhere they can afford to--Western Kentucky included. But the fact remains that apartment rental agents are setting arbitrary and illegal limits on the constitutional freedoms of blacks. Although Henderson, Owensboro, Bowling Green, and Paducah can all lay claim to significantly less apartment rental discrimination than either Louisville or Lexington--whose discrimination rates were 34.8 percent and 30.5 percent, respectively, in 1987--none can say that their apartment complexes and landlords are free from discriminatory

practices.

Rental agents have no legal--or moral--standing to act as "gatekeepers" making arbitrary decisions about who can or cannot live in any locale because of skin color. The word must continue to go out that this behavior will not be tolerated; those who practice it will be caught and punished.

APPENDIX A

METHODOLOGICAL NOTES

This report is based on the results of 47 tests of apartment complexes in Western Kentucky during 1989 and 48 tests conducted during 1987. Apartment complexes tested were selected randomly during each year. No systematic effort was made to retest apartments in 1989 that had been tested in 1987, but many complexes were nonetheless tested during each year.

The tests were performed by "teams" consisting of one white and one black tester--two teams of men and two teams of women. Each team was matched to eliminate important differences in age, appearance, apparent economic means, or general background. Roles and housing needs were evenly matched before each test. Pairing in this way attempted to eliminate any differences in treatment which were attributable to factors other than race.

Testers underwent training and performed several practice tests before they were allowed to go in the field. The need for precise and objective reporting was emphasized at all times during the training program and during the actual testing. Testers were instructed to let real estate agents do their job. They were instructed not to ask leading questions and only ask questions if the agent did not volunteer information such as lease requirements or rent. If agents made racist statements, the testers were instructed to ignore the comments or make a non-commital response.

The white tester visited the complex or agency first in almost all instances. Little time was allowed to elapse between visits by the two teams to eliminate the possibility of changes in housing availability. In those tests in which agents told the white tester that an apartment was available but told the black tester that no vacancies existed, the white tester made a follow-up phone call to determine if the vacancy status had changed between visits.

No communication occurred between members of a testing team until after a test was completed. Each tester completed the forms used to measure test results without consulting his/her teammate. Tests were considered invalid and eliminated from tabulating if any mistakes were made by the testers or if special circumstances occurred. On those occassions when testers were supposed to wait for the agent to volunteer information but instead asked for an answer before the agent had a chance to volunteer the information, that part of the test was considered invalid.

Testers filled out forms to record results immediately following each test. A member of the Commission staff evaluated the forms to determine if different and negative treatment had occurred against the black tester.

Eight categories were used to measure discrimination: neglect, courtesy, requirements, availability, racial remarks, location, price, and quality. About 40 specific measures of discrimination

were distributed among the categories to measure specific acts of discrimination. A "positive" occurrence of discrimination was marked in a category when a black tester was treated differently and negatively than the white tester in one of the specific discrimination measures. One instance or many incidents of discrimination could occur in each category, but the category would still be marked "positive" for discrimination only once.

For example, four specific measures are included under the "availability" category. One of these measures is "agent's initial response to the tester's request for housing." If the agent told the white tester that a two-bedroom apartment was available but told the black that no vacancies existed, then discrimination occurred. Even if this was the only element in which a "positive" discrimination measurement was made, the entire "availability" category would be evaluated as "positive" for discrimination.

Based on the results of these tests, Commissioner-initiated complaints have been filed against a number of apartment complexes and real estate agencies alleging illegal discrimination against blacks. For the most part, these tests involved misrepresentation of apartment availability, but other instances of discrimination were usually involved.

Staff investigations of complaints against apartment complexes must reveal fairly substantial evidence of discrimination before a complaint of discrimination based on race can be filed. A determination of "discrimination" as the term is used in this report, however, did not have to meet such high legal standards. In the report, discrimination is defined as different and negative treatment of a black when compared to the treatment given a white. If different and negative treatment toward the black occurred and no additional circumstances were involved to make the comparison invalid, "discrimination" occurred.

"Discrimination" and "different and negative treatment" are used synonymously in the report and refer to the same type of less-than-equal treatment given to blacks. References to "all measureable instances" mean either that the results of some tests could not be counted, or indicate all the measureable instances within a category: ie, the sum of all measures. "All of the tests" refers to results for individual measures in which all the tests were procedurally correct.

The specific instances of discrimination described in the report's "sidebars" are the exception, not the rule. For each depiction of discrimination, there were many more instances in which rental agents were courteous and helpful with black testers.

APPENDIX B

Pertinent provisions of the Kentucky Civil Rights Act (KRS Chapter 344) which pertain to and set forth the prohibitions against discrimination in housing, show who is covered and the procedures for filing and processing a complaint of housing discrimination.

COVERAGE

360- 385

344.360 Unlawful housing practices

It is an unlawful practice for a real estate operator, or for a real estate broker, real estate salesman, or an individual employed by or acting on behalf of any of these:

(1) To refuse to sell, exchange, rent or lease or otherwise deny to or withhold real property from an individual because of his race, color, religion, or national origin;

(2) To discriminate against an individual because of his race, color, religion, or national origin in the terms, conditions, or privileges of the sale, exchange, rental or lease of real property or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or transmit a bona fide offer to purchase, rent or lease real property from an individual because of his race, color, religion, or national origin;

(4) To refuse to negotiate for the sale, rental or lease of real property to an individual because of his race, color, religion, or national origin;

(5) To represent to an individual that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to permit an individual to inspect real property because of his race, color, religion or national origin;

(6) To print, circulate, post or mail or cause to be printed, circulated, posted or mailed an advertisement or sign, or to use a form of application for the purchase, rental or lease of real property, or to make a record of inquiry in connection with the prospective purchase, rental or lease of real property, which indicates, directly or indirectly, a limitation, specification, or discrimination as to race, color, religion or national origin or an intent to make such a limitation, specification, or discrimination;

(7) To offer, solicit, accept, use or retain a listing of real property for sale, rental or lease with the understanding that an individual may be discriminated against in the sale, rental or lease of that real property or in the furnishing of facilities or services in connection therewith because of his race, color, religion, national origin; or

(8) To otherwise deny to or withhold real property from an individual because of his race, color, religion or national origin.

HISTORY: 1972 H 430, § 12, eff. 6-16-72
1968 S 264, § 3

344.365 Exemption from housing provisions

(1) Nothing in KRS 344.360 shall apply:

(a) To the rental of housing accommodations in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or a member of his family resides in one of the housing accommodations;

(b) To the rental of one (1) room or one (1) rooming unit in a housing accommodation by an individual if he or a member of his family resides therein;

(c) To a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised or controlled by a religious corporation, association or society, to the extent that the religious corporation, association, or society, limits, or gives preferences in, the sale, lease, rental, assignment, or sublease of real property to individuals of the same religion, or makes a selection of buyers, tenants, lessees, assignees, or sublessees, that is calculated by such religious corporation, association, or society to promote the religious principles for which it is established or maintained.

(2) Nothing in this chapter shall be construed to affect the legal rights of a private individual homeowner to dispose of his property through private sale without the aid of any real estate operator, broker or salesman and without advertising or public display.

(3) Nothing in this chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

HISTORY: 1974 S 135, § 4, eff. 6-21-74
1972 H 430, § 13; 1968 S 264, § 6

344.370 Unlawful financial practices

It is an unlawful practice for a financial institution or an individual employed by or acting on behalf of a financial institution:

(1) To discriminate against an individual because of the race, color, religion, or national origin, sex, or age of the individual or the present or prospective owner, tenant or occupant of the real property or of a member, stockholder, director, officer, employe, or representative of any of these, in the granting, withholding, extending, modifying or renewing, the rates, terms, conditions, privileges or other provisions of financial assistance or in the extension of services in connection therewith; or

(2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicate directly or indirectly, a limitation, specification, or discrimination as to race, color, religion, or national origin or an intent to make such a limitation, specification, or discrimination.

(3) To discriminate by refusing to give full recognition, because of sex, to the income of each spouse or the total income and expenses of both spouses where both spouses become or are prepared to become joint or several obligors in real estate transactions.

HISTORY 1974 H 529, § 5, eff. 6-21-74
1968 S 264, § 5

344.375 Agency no defense in proceeding against real estate dealer

It shall be no defense to a violation of this chapter by a real estate operator, real estate broker, real estate salesman, financial institution, or other person subject to the provisions of this chapter that the violation was requested, sought or otherwise procured by a person not subject to the provisions of this chapter.

HISTORY 1968 S 264, § 7, eff. 6-13-68

344.380 Block busting

It is an unlawful practice for a real estate operator, a real estate broker, a real estate salesman, a financial institution, an employe of any of these, or any other person, for the purpose of inducing a real estate transaction from which he may benefit financially:

(1) To represent that a change has occurred or will or may occur in the composition with respect to race, color, religion or national origin of the owners or occupants in the block, neighborhood, or area in which the real property is located; or

(2) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

HISTORY 1968 S 264, § 4, eff. 6-13-68

344.385 Notice of violation by real estate dealer to be given real estate commission

Where a real estate broker or a real estate salesman has failed to comply with an order issued by the commission or has been found to have committed an unfair housing practice in violation of KRS 344.380, the commission shall notify in writing the real estate commission of the Commonwealth of Kentucky of said failure to comply or violation.

HISTORY 1968 S 264, § 11, eff. 6-13-68

COMPLAINT PROCESS

200 - 240

344.200 Complaints of discrimination; procedure; conciliation agreements, enforcement

(1) An individual claiming to be aggrieved by an unlawful practice, a member of the commission, or the attorney general may file with the commission a written sworn complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the commission to identify the persons charged (hereinafter the respondent). The commission staff or a person designated pursuant to its rules shall promptly investigate the allegations of unlawful practice set forth in the complaint and shall within five (5) days furnish the respondent with a copy of the complaint. The complaint must be filed within one hundred eighty (180) days after the alleged unlawful practice occurs.

(2) The commission or an individual designated pursuant to its rules shall determine within thirty (30) days after the complaint has been filed whether there is probable cause to believe the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and shall furnish a copy of the order to the complainant, the respondent, the attorney general, and such other public officers and persons as the commission deems proper.

(3) The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order. Upon such application, the commission or an individual designated pursuant to its rules shall make a new determination within ten (10) days whether there is probable cause to believe that the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and furnishing a copy of the order to the complainant, the respondent, the attorney general, and such other public officers and persons as the commission deems proper.

(4) If the staff determines, after investigation, or if the commission determines after the review provided for in subsection (3) that there is probable cause to believe that the respondent has engaged in an unlawful practice, the commission staff shall endeavor to eliminate the alleged unlawful practice by conference, conciliation and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and make such further provisions as may be agreed upon between the commission or its staff and the respondent. If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, the attorney general, and such other public officers and persons as the commission deems proper. Except for the terms of the conciliation agreement, neither the commission nor any officer or employe thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation, or persuasion whether or not there is a determination of probable cause or a conciliation agreement.

(5) At the expiration of one (1) year from the date of a conciliation agreement, and at other times in its reasonable discretion, the commission staff may investigate whether the terms of the agreement have been and are being complied with by the respondent. Upon a finding that the terms of the agreement are not being complied with by the respondent, the commission shall take such action as it deems appropriate to assure compliance.

(6) At any time after a complaint is filed, the commission may file an action in the circuit court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has his principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under KRS 344.160, 344.190 to 344.210, and 344.230 to 344.260, including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have power to grant such temporary relief or restraining order as it deems just and proper.

(7) Insofar as they are not inconsistent or in conflict with the procedure and practice provided by this chapter, the Kentucky Rules of Civil Procedure will apply to proceedings under this chapter.

HISTORY: 1976 H 564, § 2, eff. 6-19-76
1974 S 135, § 2; 1972 H 430, § 11; 1968 S 264, § 9; 1966 c 2, § 503

344.210 Notice and hearing, procedure

(1) Within sixty (60) days after a complaint is filed, unless the commission has issued an order dismissing the complaint or stating the terms of a conciliation agreement or within thirty (30) days after an application for review is filed under subsection (3) of KRS 344.200, the commission shall serve on the respondent by certified mail a written notice, together with a copy of the complaint as it may have been amended, requiring the respondent to answer the allegations of the complaint at a hearing before one or more members of the commission or an individual designated pursuant to its rules, at a time and place specified in the notice. A copy of the notice shall be furnished to the complainant, the attorney general, and such other public officers and persons as the commission deems proper.

(2) A member of the commission who filed the complaint or endeavored to eliminate the alleged unlawful practice by conference, conciliation or persuasion, shall not participate in the hearing or in the subsequent deliberation of the commission.

(3) The respondent shall file an answer with the commission by certified mail not less than twenty (20) days before the hearing date. The commission or the complainant may amend a complaint and the respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the respondent has had the opportunity of a hearing on the complaint or amendment on which the order is based.

(4) The case in support of the complaint shall be presented before the commission by one of its attorneys or staff. Efforts at conference, conciliation, and persuasion shall not be received in evidence.

(5) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the hearing, may examine and cross-examine witnesses and the complainant, and may offer evidence. The complainant, the attorney general, and, in the discretion of the commission, any person may intervene, examine and cross-examine witnesses, and present evidence.

(6) If the respondent fails to answer the complaint, the commission may enter his default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(7) Testimony taken at the hearing shall be under oath and transcribed. After the hearing, in its discretion, the commission upon notice to all parties with an opportunity to be present may take further evidence or hear argument.

HISTORY: 1984 c 155, § 2, eff. 7-13-84
1980 c 114, § 96; 1966 c 2, § 504

344.220 Documentary evidence, effect

The production of a written, printed, or visual communication, advertisement, or other form of publication, or a written inquiry, or record, or other document purporting to have been made by an individual shall be prima facie evidence in a proceeding under this chapter that it was authorized by the individual.

HISTORY: 1966 c 2, § 605, eff. 7-1-66

344.230 Findings of commission; orders; nature of affirmative action

(1) If the commission determines that the respondent has not engaged in an unlawful practice, the commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, the attorney general, and such other public officers and persons as the commission deems proper.

(2) If the commission determines that the respondent has engaged in an unlawful practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease

and desist from the unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, the attorney general, and to such other public officers and persons as the commission deems proper.

(3) Affirmative action ordered under this section may include but is not limited to:

(a) Hiring, reinstatement or upgrading of employes with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(b) Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs.

(c) Admission of individuals to a place of public accommodation, resort, or amusement.

(d) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent.

(e) Reporting as to the manner of compliance.

(f) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission.

(g) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(h) Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarassment, and expense incurred by the complainant in obtaining alternative housing accommodations and for other costs actually incurred by the complainant as a direct result of such unlawful practice.

(4) The commission may publish or cause to be published the names of persons who have been determined to have engaged in an unlawful practice.

HISTORY: 1974 S 135, § 3, eff. 6-21-74
1966 c 2, § 505, 506

344.240 Judicial review, scope, procedure, order for enforcement

(1) A complainant, respondent, or intervenor aggrieved by an order of the commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the commission may obtain an order of the court for enforcement of its order, in a proceeding brought in the circuit court in a county in which the alleged unlawful practice which is the subject of the order or complaint occurs or in which a respondent resides or has his principal place of business.

(2) The proceeding for review or enforcement is initiated by filing a complaint in the court. Copies of the complaint shall be served upon all parties of record. Within thirty (30) days after the service of the complaint upon the commission or its filing by the commission, or within such further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. The findings of fact of the commission shall be conclusive unless clearly erroneous in view of the probative and substantial evidence on the whole record. The court shall have power to grant such temporary relief or restraining order as it deems just, and to enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or remanding the case to the commission for further proceedings.

(3) If the commission has failed to schedule a hearing in accordance with subsection (1) of KRS 344.210 or has failed to issue an order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent, attorney general, or an intervenor may petition the circuit court in a county in which the alleged unlawful practice set forth in the complaint occurs or in which the petitioner resides or has his principal place of business for an order directing the commission to take such action. The court shall follow the procedure set forth in subsection (2) so far as applicable.

(4) The court shall not consider any matter not considered by, nor any objection not raised before, the commission, unless the failure of a party to present such matter to or raise such objection before the commission is excused because of good cause shown. A party may move the court to remand the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows good cause for the failure to adduce such evidence before the commission.

(5) The jurisdiction of the circuit court shall be exclusive and its final judgment or decree shall be subject to review by the Court of Appeals as provided by the Rules of Civil Procedure. The commission's copy of the testimony shall be available to all parties for examination without cost during business hours at the commission's office in Frankfort.

(6) A proceeding under this section must be initiated within thirty (30) days after a copy of the order of the commission is received, unless the commission is the petitioner or the petition is filed under subsection (3). If no proceeding is so initiated, the commission may obtain a decree of the court for enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent.

HISTORY: 1976 H 731, § 120, eff. 6-19-76
1968 S 264, § 10; 1966 c 2, § 507

RIGHT OF PRIVACY SUIT

450

344.450 Civil remedies for injunction and damages

Any person deeming himself injured by any act in violation of the provisions of this chapter shall have a civil cause of action in circuit court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record, all of which shall be in addition to any other remedies contained in this chapter.

HISTORY 1974 H 529, § 8, eff. 6-21-74

104 KAR 1:060

RELATES TO: KRS Chapter 344
PURSUANT TO: KRS 344.250 (2), 13.082
SUPERSEDES: HR-6
NECESSITY AND FUNCTION: As provided in K.R.S. 344.250, this regulation requires the owner of apartment buildings with twenty-five (25) or more units to keep records and to file annual reports with the Commission indicating their racial occupancy and application experience. The information obtained is used by the Commission in accordance with K.R.S. 344.190 (10) and (11) to provide technical assistance to the real estate industry to facilitate compliance with the fair housing provisions.

Section 1. Definitions. As used in this rule: (1) "Multiple apartment development" means one (1) or more buildings situated at the same general location or operated under one (1) management or with ownership in common; or more than one (1) building situated in various locations within the Commonwealth of Kentucky if they are under the same management or are owned by the same person or persons. It shall include, but not be limited to, an apartment building or buildings, garden apartments, and condominiums.

(2) "Racial designation" means white, black and other.

(3) "Leaseholder" means the party with whom the landlord has contracted for the apartment rental, whether the contracting be orally or in writing. It shall include any subletee or assignee of the contract where notice or approval of subleting or assignment is a condition of the contract.

(4) "Apartment turnover" means a change of leaseholder or purchaser.

(5) "Applicant" means any persons who appear before either the owner, leasor, agent or other principal or operator of a multiple apartment development for the purpose of renting or purchasing an apartment.

(6) Unless the context indicates to the contrary all terms used in this rule have the same meaning as in KRS Chapter 344.

Section 2. Persons required to report. The owner or owners of every multiple apartment development which have twenty-five (25) units or more shall file an annual report with the Kentucky Commission on Human Rights concerning the racial composition of the multiple dwelling and factors affecting the composition. Where there are multiple owners of a development and the development is operated as one (1) unit a consolidated report may be filed. Managers, agents, or others responsible for management of apartments may file for owners. Reports for condominiums shall be filed by the development manager.

Section 3. Form and contents of report. The report shall be submitted on forms approved by the Kentucky Commission on Human Rights as in accordance with Exhibit A; and said forms shall be available at any office of the Kentucky Commission on Human Rights.

Section 4. Filing of reports. One (1) copy of the report shall be filed with the Kentucky Commission on Human Rights by July 1, of each year. The report shall include information for a period of one (1) year prior to the month of filing. The Commission may waive submission of all or a part of a report for hardship situations as provided in KRS 344.250 (4). The executive director of the commission may in his discretion postpone or waive the filing of any report required under this rule.

Section 5. Maintenance of records. The owner or owners of the multiple apartment development shall be responsible to have maintained at all times the following records:

(1) Racial designation of each applicant for an apartment;

(2) Racial designation of each new apartment leaseholder or purchaser;

(3) Racial designation of each new leaseholder or purchaser;

(4) Apartment rental or sales recruiting techniques employed; and

(5) Such other records as the Kentucky Commission on Human Rights determines is necessary to effectuate the purpose of KRS Chapter 344. Such records shall be kept on file for a period of two (2) years and shall be produced for inspection upon request of the Kentucky Commission on Human Rights during business hours.

Section 6. Violation. If a person fails to make, keep or preserve the records or make reports in accordance with this regulation, the circuit court for the county in which such person resides, or has his principle place of business, upon application of this commission in accordance with KRS 344.250 (7), may issue an order requiring compliance.

APPROVED AS TO FORM AND LEGALITY:

Galen Martin, Attorney at Law and Executive Director
Kentucky Commission on Human Rights

ADOPTED THIS 8th DAY OF NOVEMBER, 1974

Paul Oberst, Chairman
Kentucky Commission on Human Rights

(Submitted January 10, 1975, to the Administrative Regulations Service, Legislative Research Commission, approved and effective January 10, 1975.)

APPENDIX B (Continued)

EXHIBIT A

MULTIPLE DWELLING REPORTING FORM

RETURN ONE (1) COPY ONLY

1. For the period ending July 1, 1974, and to be filed WITHIN 10 DAYS THEREAFTER.
2. Name of Development _____
3. Street Address(es) _____
4. Owner(s) of Development _____
5. Street Address(es) _____
6. Name and full address of the Manager or Management Agent, if different from owner _____

7.

	TOTAL	STUDIO	1-BDRM	2-BDRM	3+ BDRM
a. No. of Units					
b. Minimum rent (monthly					
c. Maximum rent (monthly)					
*d. Circle utilities included		E W G	E W G	E W G	E W G
e. No. of black families					
f. No. of white families					
g. No. of "other" families					
h. Total no. of turnovers					
i. Length of lease required					
j. Total no. of black applicants					
k. Total no. of white applicants					
l. Total no. of "other" applicants					
m. Total no. of applicants					

* Circle these utilities, if any, which are included in the rent in each apartment category in the development. E-Electricity, W-Water, G-Gas.

*8. List all newspapers or other publications in which advertisements for tenants have been placed within the reporting period. Check the box best describing the frequency of such ads.

Advertising in Newspaper or Other Publication	Regular	Concentrated	Occasionally	Single

* Regular - once a week or more during at least three of the last six months.
Concentrated - a single period of one week or more of advertising during the past six months.
Occasionally - scattered ads a couple of times a month.
Single - one ad running for less than a week.

9. Have you requested referrals of prospective tenants by any organizations or employers? YES ____ NO ____ If you answer "YES" complete the box below. If answer is "NO" disregard the box below.

Name of Organization	Address	Total References	Black References	Other

If additional space is needed to answer any of the questions on this form, please use the back of the form and additional sheets of paper. Please sign your name on all additional sheets.

CERTIFICATION: I declare that I have examined this form and to the best of my knowledge believe it is true, correct and complete.

Name of person filing report _____
Address of person filing report _____
Telephone Number of person filing report _____
Date of filing report _____

Signature _____
Title _____

Any person who fails to comply with the requirements of the Multiple Dwelling Reporting Rule may be subject to the provisions of the Kentucky Civil Rights Act, KRS 344.250 (7).

RETURN FORM TO: Kentucky Commission on Human Rights
828 Capital Plaza Tower
Frankfort, Kentucky 40601

INTERPRETATIONS AND GUIDELINES

Introduction:

The Kentucky Commission on Human Rights has the responsibility to provide assistance to those covered by the Kentucky Civil Rights Act, to promote their compliance with the Act and the elimination of discrimination. In April, 1973, the Commission adopted advisory Interpretation - A on Employment Discrimination. In July, 1974, the Commission adopted Guidelines for Avoiding Sex Discrimination in Credit. Now the Commission hereby adopts advisory Interpretation - B on Housing Discrimination. These guidelines and interpretations are not Commission regulations. They are designed to clarify Commission policy for the public, respondents and complainants. They are to be published and disseminated with the Commission regulations and other interpretations. Believing that all interested parties should have an opportunity to advise the Commission concerning these matters, the Commission invites suggestions and expects to make necessary revisions based on experience.

These interpretations are consistent with federal and state court decisions, with the regulations and decisions of the respective federal agencies including the U. S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission and with the case decisions of the Kentucky Commission on Human Rights. They are the legal bases upon which the Commission handles cases which come before it and are binding upon staff and Hearing Commissioners. They are founded upon the legal definition of discrimination adopted by Chief Justice Warren Burger for the Supreme Court of the United States, in GRIGGS V. DUKE POWER COMPANY, 401 U. S. 424, 91 S. Ct. 849 (1971). Under this definition, acts and practices which have the effect of excluding minorities or women and are not related to business necessity are illegal, regardless of the intent or motivation of the respondent. Under this definition of discrimination, when a violation occurs, the remedy requires affirmative corrective action on the part of the respondent, not merely cessation of the prohibited act or practice.

INTERPRETATION - B -- ON HOUSING DISCRIMINATION

The Commission adopts this interpretative statement to resolve issues with respect to housing discrimination because of race, color, religion or national origin which have been or may be raised, to provide advice to interested parties as to how it intends to interpret the law in complaints filed with the Commission and to speed the internal processing of these complaints. This advisory interpretation is designed to assist property owners, the real estate industry and others covered by the Kentucky Civil Rights Act. The purpose is to clarify the obligations set forth in the Kentucky Civil Rights Act (Kentucky Revised Statutes, Chapter 344 as amended) and particularly Sections 344.020, 344.190 (8) (10) (11) (14), and 344.360 through 344.385.

One of the purposes of the Kentucky Civil Rights Act as provided in K.R.S. 344.020 (1) (a) is "To provide for execution within the state of the policies embodied in . . . Title VIII of the Federal Civil Rights Act of 1968 (82 Stat. 81) . . ." In this regard, particular reference is made to Section 804, (42 U. S. C. 3601 et seq), which prohibits refusals to sell or rent after the making of a bona fide offer, refusals to negotiate for sale or rental, or other acts, practices, or procedures which make unavailable or deny a dwelling to any person because of race, color, religion or national origin.

This Commission calls attention to the written record in the eight housing cases in which the Commission has held hearings and issued Findings of Fact, Conclusions of Law and an Order. The Commission notes that the 1974 Kentucky General Assembly enacted Senate Bill 135 (Chapter 187 of the 1974 Kentucky Acts) which explicitly added additional housing

discrimination remedies. These amendments expressly empower the Commission with the authority, in housing cases to order:

(g) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(h) Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarrassment, and expense incurred by the complainant in obtaining alternative housing accommodations and for other costs actually incurred by the complainant as a direct result of such unlawful practice.

1. Discrimination Defined:

The principle of the case of GRIGGS V. DUKE POWER COMPANY 401 U. A. 424 (1971) as quoted in Interpretation - A, is applicable to discrimination in housing. Thus, acts, practices, or procedures which have the effect of restricting minority access to housing are illegal unless justified by compelling business necessity. The Commission will interpret the Kentucky Fair Housing Amendments of 1968 (K. R. S. 344. 360 to 344. 385) in conjunction with federal law and common law in protecting the rights guaranteed by the Constitution.

2. Discrimination in Rental of Multi-Family Housing Units:

Owners, landlords, managers and operators of multi-family housing units violate Kentucky law if their rental or tenant selection practices have the effect of segregating or perpetuating the segregated character of the units or otherwise making such units unavailable to minority persons, or denying to such persons the notice of an opportunity to apply for and purchase or rent such units. For example, an owner, landlord, manager or operator might fill vacancies as follows:

A. by word of mouth recruiting by present occupants who are substantially all white;

B. by walk-in applicants where the dwelling or project is located in a substantially all-white area;

C. by advertisement through on site signs, or signs located near the dwelling or project, where the area is frequented largely by white persons;

D. by advertising limited to media whose audience is substantially all white, as in a suburban newspaper where the community has few minority residents, and the paper has few minority readers.

Where the effect of such recruiting practices is that whites apply and Blacks do not, this is evidence that such recruiting practices result in denial to minority persons of notice and opportunity to apply for such housing, in violation of Kentucky law.

The Commission will apply this interpretation with respect to substantial business operations, not necessarily to the rental of few units.

3. Discrimination in Practices and Procedures:

Practices and procedures which have the effect of making it more difficult for members of minority groups to obtain housing than for the majority of the population are illegal unless justified by compelling business necessity. For example, a minimum income qualification may be imposed in order to assure that tenants will be able to pay rent and other appropriate

charges. Each specific minimum income qualification must be necessary for the financially sound operation of the business. In determining whether prospective tenants meet such income qualifications, the landlord shall include all income of all prospective tenants. Income shall include, but not be limited to, wages, veteran's benefits, social security benefits, disability benefits, welfare payments and other government subsidies. It was common practice of landlords to consider only the income of one wage earner among prospective tenants (generally the male) for a housing unit. This practice constitutes discrimination on the basis of sex and is prohibited by the 1974 amendments to the Kentucky Civil Rights Act as well as regulations on HUD and VA insured home loans. It is also illegal as applied to minority applicants for housing units because it will exclude a higher proportion of minority applicants than of white applicants (where more frequently both spouses are wage earners) and is not justified by compelling business necessity. Criteria for tenant selection other than those directly related to the ability to pay rent and other appropriate charges are presumptively unlawful if they have a disparate effect on minority as opposed to white applicants for housing, unless justified by compelling business necessity.

4. Discrimination in Initial Sale of Single Family Housing, Condominium and Cooperative Housing and Homesites:

These principles are also applicable to developers and sellers of new housing units, including condominiums and cooperatives, and to sellers of homesites. The Commission is concerned that initial selling practices may, as they have in the past, create segregated neighborhoods.

Developers and sellers of projects containing ten or more new housing units or homesites located in an area which is predominantly white and where it appears likely that sales will be primarily to white applicants, have an affirmative duty to avoid sales and advertising practices which may have a discriminatory effect. Use of sales efforts directed substantially at the white community such as use of advertising media likely to reach the white community but not the minority community, or selling practices which are intended to or have the effect of discouraging minority applicants, or failure to use the Equal Housing Opportunity slogan or logo, or selling efforts which have the effect of attracting substantially all-white applicants, will be viewed by the Commission as a violation of the Kentucky laws.

5. Discrimination in Mobile Home Parks:

These principles are also applicable to mobile home park owners, operators, or other persons in charge of mobile home parks which have substantially all-white owners or occupants. It is a violation of Kentucky law if the sales, rental, and owner or tenant selection practices have the effect of creating or perpetuating the segregated trailer parks, or otherwise making unavailable or denying to minority persons the opportunity to occupy sites through the rental or purchase or use of space and rental or purchase of mobile homes. The illustrations in Section 2, supra are applicable to the filling of vacancies in a mobile home park. Where the effect of the practices of owners and operators is that only white persons apply for sites, there is a presumption of a denial to minority persons of the notice and opportunity to apply for mobile home occupancy in such parks.

Similarly, rental or occupancy practices and procedures which have the effect of making it more difficult for members of minority groups to obtain space are illegal. The illustrations in Section 3, supra are applicable. For example, if there is a requirement that applicants must have lived previously in a trailer park environment, or must have previously owned a mobile home, this is presumptively illegal as to minority persons, because a higher proportion of minority persons will not have lived in or owned mobile homes.

6. Discrimination in Land and Homesite Development:

These principles are also applicable to developers of recreational land areas and home-sites. Most of the recreation lands are located in the western and eastern parts of the state while minorities are heavily concentrated in Louisville and other cities -- thus creating a segregated recreational land development practice. Therefore, the Commission will view the following action by a recreational land developer or seller of homesites as a violation of the Kentucky laws: the sales efforts are directed substantially at the white buying public. This may be demonstrated by advertising in the media likely to reach the white community only, selective promotional presentations and mailings to all white groups, or omitting the Equal Housing Opportunity slogan-logo in advertisements if the effect of sales and promotion efforts is that the initial group of interested persons, the initial applicants for purchase or participation or the initial persons purchasing or participating in the development are substantially white.

7. Public Notice of Fair Housing:

The Kentucky Commission on Human Rights has directed persons responsible for the sales and rentals of property in Kentucky to use the Commission's "Memo to Property Owners and Housing Customers," and the "Equal Housing Opportunity Poster."

It is the Commission's position that past patterns of discrimination in housing have resulted not only in racially segregated housing, but have also established deep-seated psychological impressions of those areas which are racially "inclusive" or "exclusive." This situation demands an active and affirmative effort to give consistent and clear notice of equality of housing opportunities for minorities.

Under these circumstances, a developer, real estate company, seller, owner, landlord, manager, or operator, should, as provided in Commission Regulation HR-1, display in sales and rental offices the Kentucky "Equal Housing Opportunity Poster," and make available copies of the "Memo to Property Owners." In advertising and solicitation, they should display the HUD Equal Housing Opportunity logo and the Equal Housing slogan in combination, in a form which is as visible and important as other information conveyed. The failure to do so will be considered prima facie evidence of discrimination in cases brought before the Commission. Newspapers and other advertisers are hereby advised of the Commission policy in these matters. The Advertising Guidelines for Fair Housing of the Department of Housing and Urban Development -- F. R. -- illustrate appropriate forms for the slogan and logo, and the Commission will make copies available.

8. Compensatory Damages:

All persons who have been humiliated and embarrassed by an act of unlawful housing discrimination may be entitled to receive compensatory damages from the person found to have committed this unlawful act. The Kentucky Civil Rights Act, as amended in 1974, provides damages for injury caused by an unlawful housing practice and makes humiliation and embarrassment without proof of trauma a basis for an award. Additionally, actual expenses directly resulting from the housing discrimination including expenses incurred by the complainant in obtaining alternative housing accommodations may be awarded by the Commission.

9. The principles stated herein are applicable to the use of and activities of real estate brokers whose practices have the effect of developing or maintaining the segregated character of a residential area and to financial institutions whose lending practices and procedures contribute to developing or maintaining the segregated character of an area, or contribute to the difficulties which minority persons have in obtaining decent housing, and are not justified by business necessity.

10. In implementing these guidelines, the Commission will survey the practices of owners and operators of dwellings, parks and projects, and take appropriate action where violations of the laws or these guidelines are identified, including Commissioner initiation of complaints.

APPROVED AS TO FORM AND LEGALITY:

Galen Martin, Attorney at Law and Executive Director
Kentucky Commission on Human Rights

ADOPTED THIS 12th DAY OF DECEMBER, 1974

Paul Oberst, Chairman
Kentucky Commission on Human Rights

EFFECTIVE DATE: JANUARY 12, 1975

APPENDIX C

BIBLIOGRAPHY OF RELATED COMMISSION PUBLICATIONS

Race Discrimination in Housing Almost Halved in Louisville and Lexington But Discrimination Persists, 1977 - 1987, a report which compares results of tests for discrimination at the same apartment complexes and real estate agencies first tested 10 years before. This is the first publication in the nation to report on follow-up tests based on the 40-city Housing Market Practices Survey conducted in 1977. 44 pages. December 1987.

HUD Order Increases Segregation In Kentucky Public Housing, 1988, shows that segregation at the 19 public housing authorities which had operated with affirmative action desegregation plans increased segregation for the first time ever, following a directive from the Department of Housing and Urban Development which required 16 of them to stop using the Commission-sponsored desegregation plans. 91 pages. January 1989.

Kentucky's Public Housing Authorities Continue to Reduce Segregation, 1987, a report which shows that the authorities with affirmative action desegregation plans reduced segregaton for the seventh consecutive year while the authorities without plans decreased segregation to its lowest level ever. 71 pages. April 1988.

Louisville Lenders Slightly Improve Poor Home Mortgage Lending Record in Black and Desegregated Neighborhoods of Jefferson County, 1987--1989, a report which shows that low- and middle-income areas of Jefferson County with substantial black populations are not receiving a "representative percentage of the home mortgage credit made available" by Louisville banks and savings and loans. 41 pages. August 1989.

Black and Desegregated Census Tracts of Fayette County Receive Low Percentage of Home Mortgage Loans, 1987--1988, a report which shows that predominantly black and desegregated, low- and middle-income census tracts in Fayette County made up 25.4 percent of the areas owner-occupied households and received 18.1 percent of the mortgage loans approved by area banks and savings and loans in 1987 and 1988. 38 pages. July 1989.

Kentucky Civil Rights Decisions, 1972--1989, a compilation of 17 significant civil rights decisions made by the Kentucky appellate courts. The cases involve housing, employment, and public accommodations, and cover the spectrum of racial, sexual, and religious discrimination. They address both procedural and substantive law, and represent the Kentucky courts' interpretation of civil righrs legislation enacted by the Kentucky General Assembly. 124 pages. August 1989.

They Won't Tell You It's Because You're Black, a pamphlet which details how some landlords use "explanations" which may be in fact discriminatory acts to deny housing to blacks. It also explains what Kentucky's Fair Housing Law prohibits and how to report suspected discrimination. July 1985.

What Kentucky's Fair Housing Law Means, a leaflet to property owners and housing customers detailing their rights and responsibilities under Kentucky's Fair Housing Law. Updated and revised, 1986.

How to File a Complaint of Discrimination Based on Race, Color, Religion, National Origin, Sex or Age Between 40 and 70, a leaflet containing information about complaints and the Commission's investigative procedures. Includes complaint form.

"Clark to be Executive Director of Commission on Human Rights," is the lead article of the August, 1989 edition of the Human Rights Report, the Commission's newsletter.

NOTE: During the upcoming months, Commission staff will release reports comparable to this one covering the results of apartment testing for race discrimination in Northern and Central Kentucky in 1989.

COMMONWEALTH OF KENTUCKY
Wallace G. Wilkinson, Governor

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Under the Kentucky Civil Rights Act of 1966, KRS 344.190 (11), the Commission has the duty "to make studies appropriate to effectuate the purpose and policies of this chapter and to make the results thereof available to the public."

This staff research report was prepared by Eric George, Research Assistant.

For information and assistance call, write, or visit one of these offices:

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